

THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

	)	
FIBER TECHNOLOGIES NETWORKS, L.L.C.	)	
140 Allens Creek Road	)	
Rochester, NY 14618,	)	
	)	
Complainant,	)	
	)	
v.	)	D.T.E. 01-70
	)	
TOWN OF SHREWSBURY ELECTRIC	)	
LIGHT PLANT	)	
100 Maple Avenue	)	
Shrewsbury, MA 01545-5398,	)	
	)	
Respondents.	)	
	)	

**REPLY COMMENTS OF FIBER TECHNOLOGIES NETWORKS, L.L.C.  
ON THE EFFECT OF ITS WHOLESALE TARIFF FILING**

In Comments of Shrewsbury’s Electric Light Plant (“SELP”) filed with the Department of Telecommunications and Energy (“DTE” or “Department”) on January 20, 2004, SELP admittedly agrees with Fiber Technologies Networks, L.L.C.’s (“Fibertech”) conclusion: that Fibertech’s Massachusetts D.T.E. Tariff No. 3 (“M.D.T.E. 3”) filing does not alter the fundamental issues presented by Fibertech’s long-pending complaint and motion for reconsideration.<sup>1</sup> However, SELP agrees with this conclusion for the wrong reason. SELP’s simple assertion that the Department’s *Wholesale Tariff Order*<sup>2</sup> has nothing to do with the material issues at hand misses the fact. Fibertech’s M.D.T.E. 3 filing vitiates grounds for

<sup>1</sup> “SELP agrees that the filing by Fibertech of its wholesale tariff, M.D.T.E. 3, does not alter or impact the issues of law and fact raised by Fibertech’s motion for reconsideration and clarification, or, for that matter, it’s initial complaint.” *Comments of Shrewsbury’s Electric Light Plant*, D.T.E. 01-70 (January 20, 2004).

<sup>2</sup> *Clarification of Wholesale Tariffing Requirements* (August 12, 2003) (“*Wholesale Tariff Order*”).

SELP's refusal to grant access to its poles because it demonstrates that Fibertech is offering lit service, which SELP has never contended are not the transmission of intelligence, and approval of the tariff pursuant to the *Wholesale Tariff Order* established these services are currently available. Thus, any doubt that SELP may have raised regarding Fibertech's eligibility to attach fiber-optic telecommunications cables to poles in Shrewsbury is now removed.

In its comments, SELP argues that the Department's statements in its *Interlocutory Order*<sup>3</sup> trump the Department's statements in the *Wholesale Tariff Order*. SELP states that the *Wholesale Tariff Order* is merely a "staff-generated document." SELP's characterization of the *Wholesale Tariff Order* as a mere procedural document with no substantive meaning is untenable. The *Wholesale Tariff Order* requires that tariff filings indicate that the tariffed service "is either currently available, available within a specified time, or available subject to specific regulatory approvals" and provides that the Department will reject tariffs that do not meet this requirement. *Wholesale Tariff Order* at 9. The Department's approval of Fibertech's M.D.T.E. 3 within the framework of the *Wholesale Tariff Order* demonstrates that Fibertech is providing such tariffed services.

SELP attempts to argue that Fibertech has failed to comply with the *Wholesale Tariff Order*.<sup>4</sup> This argument must fail. Fibertech filed its M.D.T.E. 3 on November 10, 2003. The Department permitted Fibertech's M.D.T.E. 3 to take effect on December 10, 2003. If Fibertech's M.D.T.E. 3 failed to comply with the Department's requirements, then under the *Wholesale Tariff Order* the Department would have sent the filing back to Fibertech.<sup>5</sup> Moreover,

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<sup>3</sup> *Interlocutory Order on Motion of Fiber Technologies Networks for Summary Judgment and in Appeals of Fiber Technologies Networks from Hearing Officer Rulings on Motions to Compel Responses to Information Requests* (Dec. 24, 2002) ("Interlocutory Order").

<sup>4</sup> *Comments of Shrewsbury's Electric Light Plant*, at p. 8, D.T.E. 01-70 (January 20, 2004).

<sup>5</sup> According to the *Wholesale Tariff Order*, the Department will reject tariffs that do not meet the requirements set forth in the *Wholesale Tariff Order*.

if SELP believed Fibertech's M.D.T.E. 3 was not in compliance with the *Wholesale Tariff Order*, then SELP should have filed a tariff protest pursuant to Mass.G.L. c. 159 §19. SELP filed no such tariff protest, the Department approved Fibertech's M.D.T.E. 3 filing, therefore, SELP is barred from now arguing that Fibertech's M.D.T.E. 3 failed to comply with the *Wholesale Tariff Order*.

Fibertech would also like to address SELP's protest to Fibertech's comments filed with the Department on January 6, 2003. In SELP's comments filed with the Department on January 20, 2004, SELP proposed that the Department strike or refuse to consider certain portions of Fibertech's comments which SELP argues "supplement or reargue points already made in its previous reconsideration filings...". The sections of Fibertech's comments mentioned above are not intended to supplement or reargue points Fibertech has already made, but instead are intended to amplify how the issues at hand continue to be relevant notwithstanding the *Wholesale Tariff Order*. In addition, SELP wishes to strike the first paragraph on page 11. This paragraph does not set forth an argument. This paragraph simply underscores the past dialogue between the parties. For the foregoing reasons, none of Fibertech's comments should be stricken.

Respectfully submitted,

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